No. 9509

United States
Circuit Court of Appeals
For the Ninth Circuit

GEORGE H. CORNES,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Brief for Appellant

UPON APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ARIZONA

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STATEMENT OF THE CASE

Appellant, George H. Cornes, appeals from a judgment of the District Court of the United States, for the District of Arizona, finding him guilty and sentencing him to a term of imprisonment of two years on the third, fourth, and sixth counts of an indictment under which he was charged with Raymond F. Marquis, Harry S. Marquis, Edgar G. Hamilton, and Earl Canning, jointly, in the first five counts thereof, with the use of the United States mails in furtherance of a scheme to defraud (Sec. 338, Title 18, USCA, Sec.

215 Criminal Code) and in the sixth count jointly with the same persons with conspiracy to use the mails in furtherance of a scheme to defraud (Sec 88, Title 18, USCA, Sec. 37 Criminal Code).

Indictment

The indictment is set forth in full in the transcript of the record at pages 2-24. In substance it charges that Raymond F. Marquis, George H. Cornes, Harry S. Marquis, Earl Canning and Edgar G. Hamilton in the first five counts with the use of the United States mails in furtherance of a scheme to defraud, and in the sixth count with conspiracy to use the mails in furtherance of a scheme to defraud.

First Count

It is charged in the first count that the defendants devised a scheme and artifice to obtain moneys and properties from each of the individuals named as the persons to be defrauded in the first five counts of the indictment, and alleges that the scheme and artifice was to defraud and that the scheme was to be effected by:

(1) The incorporation of the State Securities Corporation for the alleged purpose of selling stocks and bonds to raise money to purchase or establish a life insurance company, the Union Reserve Life Insurance Company, the capital stock of the State Securities Corporation being represented by 250,000 shares of stock of no par value.

(2) That the defendants would secure for themselves and other incorporators 50,000 shares of the

capital stock of State Securities Corporation for the purpose of re-selling the same to persons to be defrauded and to retain proceeds of such sales for the sole benefit of defendants.

(3) That defendants would sell to persons to be defrauded such shares of stock by making false and fraudulent pretenses, representations and promises concerning the value of said stock and payment of dividends and by representing that dividends had been voted.

(4) That the State Securities Corporation was to purchase and obtain control of the insurance company for the purpose of aiding defendants in the sale of stocks and bonds of the said State Securities Corporation to the persons to be defrauded.

(5) That said defendants after having sold bonds of the State Securities Corporation to the persons to be defrauded would by false and fraudulent pretenses and representations induce the holders of said bonds to exchange them for shares of the capital stock of State Securities Corporation.

It is further alleged that among the material, false, and fraudulent pretenses and representations, so made and to be made by defendants to persons to be defrauded, for the purpose of inducing said persons to invest moneys and property in the bonds and shares of stock of State Securities Corporation, were the following:

(a) That the shares of stock of State Securities Corporation would pay back dividends and that a divi-

dend of seven per cent, or more, would be paid within a year; whereas in truth and in fact dividends would not be paid upon the stock of said State Securities Corporation.

(b) That in December, 1937, a dividend had been voted by the Board of Directors of State Securities Corporation and would be paid in January, 1938; whereas in truth and fact the Board of Directors never did vote a dividend and there was no reason to believe that a dividend would be paid.

(c) That the defendants, as officers of the State Securities Corporation and of the Union Reserve Life Insurance Company, were not drawing salaries from either of said companies; whereas defendants, and each of them, did draw large sums of money from each of said companies for services allegedly rendered said companies.

(d) That the State Securities Corporation was in good financial condition and on December 31, 1931, had assets over liabilities in the amount of $135,-660.41; whereas the State Securities Corporation in truth and fact was not in good financial condition and did not on December 31, 1931, or at any other time, have assets in excess of liabilities or at any other time, have assets in excess of liabilities in the amount of $135,660.41 or in any amount approximating that sum, or at all.

(e) That during the year 1936, the mortgage loans of the Union Reserve Life Insurance Company were increased twelve percent; whereas in truth and fact the loans were not increased in any amount *by the in-*

vestment of additional funds of the insurance company, but that the increase appearing upon the books of Union Reserve Life Insurance Company was a mere write up of the value of mortgage loans already existing.

(f) That on December 31, 1936, the Union Reserve Life Insurance Company had bonds and cash items on hand in the bank in the amount of $22,-574.50; whereas it did not have on hand such assets in that amount, but that included in such items, as shown upon the books of Union Reserve Life Insurance Company, were certain items and assets received by the Union Reserve Life Insurance Company in January and February, 1937, amounting to approximately $6,259.25.

(g) That on December 31, 1936, the Union Reserve Life Insurance Company had on hand cash in the amount of $7,653.37; whereas actually it had on hand at that time cash in the amount of approximately $1394.12 only.

(h) That on June 30, 1937, 19022 shares of the capital stock of State Securities Corporation were issued and outstanding; whereas on said date, *to all intents and purposes*, there were 50,000 shares of its capital stock issued and outstanding in that the Articles of Incorporation of said State Securities Corporation provided for the allocation of 50,000 shares to the incorporators, and by resolution of the Board of Directors the allocation and issuance of said 50,000 shares was ratified, approved, and confirmed.

It is charged in the first count that in furtherance of the scheme and artifice above set forth the de-

fendants mailed to Guy B. Baker, Casa Grande, Arizona, a letter which is set out in the first count.

Second Count

The second count adopts the allegations of the first count as to the scheme and artifice therein alleged, and then alleges that in furtherance of such scheme the defendants mailed to H. E. Simmons, Cave Creek, Arizona, a letter which is set out in the said count.

Third Count

The third count adopts the allegations as to the scheme and artifice set forth in the first count, and then alleges in furtherance thereof the defendants mailed to Mrs. May E. Bonar, 211 West Elm Street, Compton, California, the letter therein set out.

Fourth Count

The fourth count of the indictment adopts the allegations as to the scheme and artifice to defraud set forth in the first count, and alleges in furtherance of such scheme the defendants mailed to Gerald Palmer, Cross Triangle Guest Ranch, Prescott, Arizona, the letter therein set out.

Fifth Count

The fifth count adopts the allegations of the scheme and artifice to defraud set forth in the first count, and alleges that in furtherance thereof the defendants mailed to Mr. and Mrs. W. H. Etz, Yarnell, Arizona, the letter therein set forth.

Sixth Count

The sixth count alleges that beginning on or about December 1, 1929, and continuing until on or about January 1, 1938, the defendants did conspire, confederate, combine, and agree together and with each other to commit divers offenses charged against said defendents in the preceding five counts, made offenses by Section 215 of the Criminal Code of the United States, the allegations of which five counts are incorporated in the sixth count by reference, and to use the Post Office establishment of the United States in the commission of said offenses, and charges that to effect the object of the conspiracy the defendants performed:

(a) The several acts of placing letters in the Post Office establishment of the United States of Phoenix, Arizona, described in the preceding five counts of the indictment.

(b) The numerous acts of preparing said letters for mailing and delivery and the making of the false and fraudulent pretenses in the first count of the indictment described and obtaining by means thereof the moneys and properties of the persons named in the first count of the indictment as well as certain other overt acts in the indictment specified.

1. That, in furtherance of said conspiracy, on or about November 26, 1937, defendants prepared and caused to be prepared the combined balance sheet of the corporation and insurance company as of June 30, 1937;

2. That, in furtherance of said conspiracy, on or about November 26, 1937, defendants mailed and

caused to be mailed to stockholders of the corporation and others a letter dated November 26, 1937, and included in said letter a copy of the combined balance sheet of the corporation and the insurance company as of June 30, 1937;

3. That subsequent to December 31, 1936, and while said conspiracy was in existence, as hereinbefore alleged, and in furtherance thereof, the defendants prepared and caused to be prepared an annual statement of the insurance company covering the year ending December 31, 1936;

4. That subsequent to December 31, 1936, and on or about March 8, 1937, and in furtherance of said conspiracy, the defendants filed and caused to be filed with the Arizona Corporation Commission the annual statement of the insurance company;

5. That in furtherance of said conspiracy, on or about March 2, 1937, the defendants mailed and caused to be mailed to stockholders and bondholders of the corporation a financial statement of the Union Reserve Life Insurance Company as of December 31, 1936;

To this indictment the appellant George H. Cornes filed a demurrer, (T. of R. 32-39) which was by the Court overruled and exception noted (T. of R. 31).

Bill of Particulars

Appellant George H. Cornes filed a request for a Bill of Particulars (T. of R. 47-54) and the government filed what it considered to be a Bill of Particulars in

compliance with his request. (T. of R. 54-70.) Thereafter appellant George H. Cornes filed objections to the Bill of Particulars, as filed by the government, (T. of R. 76-79) and a request for a supplemental Bill of Particulars, which objections and request were separately and severally denied by the Court and exceptions duly noted (T. of R. 83).

Plea of Not Guilty

The appellant George H. Cornes, in common with the other defendants, entered a plea of not guilty.

Trial

The trial commenced on March 10, 1940, and continued from day to day until April 12, 1940, when the cause was submitted to the jury, and the jury on April 13, 1940, returned into open Court their verdicts finding the defendant Raymond F. Marquis guilty on all six counts of the indictment; appellant George H. Cornes guilty on counts three, four and six of the indictment and not guilty on counts, one, two and five; Harry S. Marquis guilty on count six and not guilty on counts one, two, three, four and five; defendant Edgar G. Hamilton guilty on counts five and six and not guilty on counts one, two, three and four, and defendant Earl Canning guilty on count six and not guilty on counts one, two, three, four and five.

At the beginning of the trial, upon stipulation of all of the attorneys, the Court made an order that any objection, or motion to strike, and the exception to the ruling thereon made on behalf of any defendant should inure to the benefit of all defendants. (T. of R. 245 and

303). This was for the purpose of preventing the necessity of the attorney for each defendant repeating objections made by some other attorney and the resulting confusion in the trial.

Evidence

It would lengthen this statement of the case unduly to here again detail all of the evidence and objections which are set forth in full in the Transcript of the Record, and which will be referred to in the discussion of the assignments of error later in this brief, but it is thought that a condensed, concise statement of the ultimate facts shown by the evidence will at this point be helpful.

The evidence tended to establish that Raymond F. Marquis in December, 1929, in co-operation with Harry S. Marquis and George H. Cornes, co-defendants, and in co-operation with other persons not named in the indictment, but including W. C. Ellis, R. J. Leavitt, James H. Kerby, Herbert S. Hall, and E. J. Flannigan, formed a corporation under the laws of the State of Arizona and secured from the Corporation Commission of that State a certificate of incorporation and permits to sell stocks and bonds. Thereafter, and throughout the existence of this company and later of the Union Reserve Life Insurance Company, many prominent citizens of Arizona were identified with them as directors, but were not included in the indictment.

It was further shown that the purpose of the corporation was to sell its stocks and bonds, and through

investment of the proceeds of such sale in securities to accumulate sufficient money to capitalize a life insurance company. Such securities were to be deposited with the Arizona Corporation Commission for the benefit of the life insurance company as provided by the laws of that state.

The State Securities Corporation then began the sale of stocks and bonds, and in December, 1929, a set of books for the company and a method of accounting was set up by the defendant Raymond F. Marquis. In the latter part of March, 1933, the company by stock purchase acquired the management of the stock of the Union Reserve Life Insurance Company, an Arizona corporation, which had been first organized under the name of the First National Life Insurance Company, which name was changed in October, 1932, prior to the acquisition of the company by the State Securities Corporation to Union Reserve Life Insurance Company; that up until this time none of the defendants had any connection with the insurance company.

After acquiring the life insurance company, the State Securities Corporation discontinued the sale of its bonds, but through its various salesmen, including appellant, continued to sell its stock, or offer it for sale, until shortly before both companies were adjudged insolvent. In fact, the State Securities Corporation attempted to, and did redeem many of its bonds, particularly where the purchaser had defaulted in the annual payment on the bond, by issuance of its capital stock to the purchaser in the amount which the purchaser had invested in the bond. This procedure was followed, of course, with the consent of the purchaser, and was de-

vised as a means of protecting the purchaser against total loss of his investment in the bonds through his failure or inability to continue the annual payments until maturity.

Much of the revenues of both companies after the acquisition of the insurance company by the State Securities Corporation was derived through sale of life insurance by the Union Reserve Life Insurance Company. The latter company, particularly after it was acquired by the State Securities Corporation, not only wrote considerable insurance, but promptly met and paid all its losses and liabilities until the late fall of 1937. During this period of time, the life insurance company had re-insured a portion of all of its risks with the Lincoln National Life Insurance Company, and in the fall of 1937 the latter company undertook to cancel its re-insured contract with the Union Reserve Life Insurance Company on the grounds that the premiums due by the terms of the contract had not been paid. About the time, or shortly after the contract of re-insurance was cancelled, the Union Reserve Life Insurance Company suffered heavy losses through the deaths of certains persons insured by it in large amounts. Whatever the merits of the controversy were between these companies concerning the cancellation of the re-insurance contract, the fact is the Union Reserve Life Insurance Company was left, for the time being, without sufficient quick assets to pay the large claims that had matured against it through the deaths referred to above, and the directors of the company were compelled to turn its business over to the Arizona Corporation Commission in March, 1938, and with it the business of the State Securities Corporation.

As To Appellant George H. Cornes

Appellant George H. Cornes became identified with the State Securities Corporation almost from the inception of that company, and throughout its existence served as a nominal officer and director. Likewise, when the Union Reserve Life Insurance Company was acquired, he occupied a similar status with it.

There was a clear and unimpeached confession and admission on the part of the government's witnesses that appellant was, in fact, nothing more than a salesman for both companies; that his time and work were almost exclusively in the field; that he exercised no control over the office personnel of either company; that he had nothing whatever to do with the bookkeeping or records of either company; that many of the letters ascribed to him by the government and bearing his name as the author were, in fact, written by other officials without his knowledge; that most of the minutes of directors' meetings and of the executive committee upon which the government relied largely for conviction were dictated by the defendant Raymond F. Marquis as the managing head of the companies, without the knowledge of appellant, and often without any actual meeting having been held; that a considerable portion of the money charged against appellant on the books and records of both companies had been withdrawn by others and charged to him without his knowledge, and that every cent of money withdrawn by appellant from either company was duly earned by him as commission on the sale of stock and life insurance.

Much documentary evidence consisting of the books, records, and check stubs of both companies was offered

and received in evidence against appellant. To this he vigorously objected, particularly in view of the admissions of the government's witnesses that he had no knowledge of the contents of such records, and that such records were decidely false as to his activities. Many of these records and the entries in the books of the companies had been kept and made by the witness King Wilson who was excused by the Court from further attendance and was permitted to leave the jurisdiction before such records and books had been offered in evidence by the government and an opportunity given appellant to properly cross-examine him.

It is worthy of note that, while appellant was convicted on counts three and four of the indictment, the very parties who the government claims were defrauded and to whom the letters mentioned in those counts were sent joined in appellant's petition to the District Court for clemency for appellant on the grounds that no misrepresentations had been made or fraud practiced by this particular appellant in the sale of stock to them. (T. of R. 130.)

Order for One Bill of Exceptions

Before proceeding to the argument, may we direct the Court's attention to the fact that by order of the District Court entered in this cause but one Bill of Exceptions, Praecipe, and Assignments of Error was required to be filed in the record on appeal on behalf of both appellants, Earl Canning and George H. Cornes, and that such documents when filed on behalf of appellant Earl Canning should inure to the benefit of the appellant George H. Cornes with the same force

and effect as though filed in this cause by him. (T. of R. 157.) This was done to shorten the record as both appellants are urging substantially the same grounds for reversal.

Specifications of Error

Appellant George H. Cornes relies upon the Assignments of Error set forth below under the appropriate specification to which they relate. Because of the length of the several assignments, they are set out in full in the Appendix to this brief, and the arguments under the several Specifications of Error are preceded by a brief summary only of the assigned errors relating thereto.

The several specifications and the questions naturally involved by the Assignments of Errors are:

SPECIFICATION OF ERROR I

Is the indictment fatally defective? (Assignment of Error I, T. of R. 158, Appendix .)

SPECIFICATION OF ERROR II

Did the Court err in overruling the objections of the appellant to the Bill of Particulars as furnished by the Government, and in denying appellant's request for a further Bill of Particulars? (Assignment of Error II, T. of R. 162, Appendix .)

SPECIFICATION OF ERROR III

Did the Court err in admitting in evidence the books, records, cancelled checks, and check stubs, of the State

Securities Corporation and the Union Reserve Life Insurance Company, and in denying appellant's motion to strike such evidence, in view of the evidence that appellant exercised no authority over such records or the office personnel by whom they were kept, and had no knowledge of their contents? (Assignments of Error VIII, T. of R. 168, Appendix ; XIII, XIV, XV, XVI, XVII, XVIII, XIX, XXIII, XXIV, XXVI, XXVII, XXVIII, XXX, XXXI, XXXII, XXXIII, T. of R. 177-189, Appendix.....; XXXIX, XL, XLI, XLII, XLIII, T. of R. 191-194, Appendix.....; L, LI, LII, LIV, LVI, LVII, LIX, T. of R. 198-202, Appendix.....; LXIII, T. of R. 204, Appendix.....; LXV, LXVI, LXVII, LXVIII, LXX, LXXI, T. of R. 207-210, Appendix.....; LXXIII, T. of R. 213, Appendix.....)

SPECIFICATION OF ERROR IV

Did the Court err in refusing to keep the Government's witness King Wilson in attendance upon the Court for cross-examination by appellant when the books and records which he identified should be offered in evidence, and in permitting said witness to leave the jurisdiction over the objection and exception of the appellant? (Assignment of Error IX, T. of R. 169, Appendix .)

SPECIFICATION OF ERROR V

Did the Court err in receiving over appellant's objection testimony of Government witness E. P. Hair on rebuttal concerning transactions between the Union Reserve Life Insurance Company and J. Elmer Johnson? (Assignment of Error LXIX, T. of R. 209, Appendix .)

SPECIFICATION OF ERROR VI

Did the Court err in denying appellant's motion for a directed verdict made at the close of the whole case? (Supplemental Assignment of Error 3, T. of R. 238, Appendix .)

Argument

I

SPECIFICATION OF ERROR I (Assignment of Error I, Appendix , T. of R. 158).

The grounds of appellant's Assignments of Error, briefly stated, are that the indictment, or any count thereof, fails to state facts sufficient to constitute any scheme or artifice to defraud, or to obtain money or property by means of false, misleading, or fraudulent representations, pretenses or promises, or to constitute a conspiracy, combination, or confederation to commit any offense against the United States or the laws thereof, and that said indictment alleges a multiplicity of separate and unrelated schemes to defraud.

IS THE INDICTMENT FATALLY DEFECTIVE?

In support of our demurrer to the indictment we urge particularly the manifest want of the requisite certainty and definiteness in its allegations to apprise appellant in what particulars the scheme set forth in the indictment was wrongful; in what manner it tended to, or did deceive or defraud the alleged victims; to what extent, if any, appellant participated in or was responsible for the mailing of the several letters men-

tioned therein; and, in addition, the seeming averment of two separate and distinct schemes. (Appendix , T. of R. 36, 37.)

The indictment is in six counts. Five contain the substantive charge, and the sixth, that of conspiracy. The first count only sets forth all the particulars of the scheme to defraud, and the manner of its execution. The other five allege the respective offenses by incorporation of the recitals of count I.

Concededly an offense under Section 238, Title 18, U. S. C. A., Sec. 215, Criminal Code, is dependent upon the use of the mails, and by some authorities, the gravamen of the offense is the deceit employed; nevertheless, the scheme or design, in furtherance of which the mails are employed and the deceit practiced, must be alleged with that degree of clarity to present an actual, present, and workable device, reasonably calculated to accomplish the intended results.

Norton vs. United States, 92 Fed. (2d) 953 (CCA9); Collins vs. United States, 253 Fed. 609 (CCA 9); Beck vs. United States, 33 Fed. (2d) 107, 109 (CCA 8).

In the instant case, however, the indictment presents merely a blueprint of an intended or contemplated scheme on the part of the accused. To illustrate, the indictment charges merely that defendants *would* incorporate the State Securities Corporation, and *would* cause 50,000 shares of its capital stock to be allocated to them, and *would* sell the stock so allocated to their intended victims by false and fraudulent representa-

tions, and *would* make false and fraudulent pretenses, representations, and promises to induce bond holders to exchange their bonds for stock. Nowhere does the indictment charge that any of these objects were actually accomplished or that the contemplated scheme or device extended beyond this preliminary stage.

We challenge this indictment further on the grounds of apparent multiplicity of schemes or devices charged against appellant. Instead of a clear, unitary scheme to defraud, this indictment apparently sets forth two separate and distinct schemes, namely, the organization of the State Securities Corporation, and the issuance of 50,000 shares of its capital stock to the incorporators, and the purchase or organization of the Union Reserve Life Insurance Company. An indictment based upon two separate schemes is clearly demurrable.

United States vs. Siebrecht, 59 Fed. (2d) 976 (CAA 2); McLendon vs. United States, 7 Fed. (2d) 271 (CAA 6); United States vs. McNamara, 91 Fed. (2d) 986 (CAA 2); United States vs. Smith, 29 Fed. (2d) 926, 928.

II

SPECIFICATION OF ERROR II (Assignment of Error II, Appendix , T. of R. 162-3-4).

In substance, this assignment of error challenges the ruling of the trial court denying appellant's motion to require the Government to supplement the Bill of Particulars as furnished to the appellant. The grounds on which error is predicated in the Assignment are that

the Bill of Particulars in the several paragraphs specified in appellant's objections thereto is so indefinite, evasive, and incomplete, and so replete with conclusions only, as to amount to a denial of the information sought by appellant and to which he was entitled, and that the Court's refusal to direct a supplemental Bill of Particulars as requested prejudiced appellant in the preparation and presentation of his defense.

DID THE COURT ERR IN OVERRULING THE OBJECTIONS OF APPELLANT TO THE BILL OF PARTICULARS AS FURNISHED BY THE GOVERNMENT, AND IN DENYING APPELLANT'S REQUEST FOR A FURTHER BILL OF PARTICULARS?

In response to appellant's demand for a Bill of Particulars (T. of R. 47) specifying forty-nine different items on which he felt entitled to information additional to that supplied in the indictment, the Government furnished a very indefinite, evasive, and incomplete document that was characterized more by the conclusions it contained than by any statement of fact or useful information necessary to the preparation of appellant's defense. (T. of R. 54.) Appellant thereupon immediately filed objections to the Bill and moved for a supplemental Bill of Particulars to supply the information which he sought and to which he was entitled. (T. of R. 76.) This motion was denied by the Court and exception of appellant duly noted. (T. of R. 83.)

We concede that the allowance of a Bill of Particulars is discretionary with the Court; nevertheless,

where an indictment, by reason of its general terms, does not sufficiently apprise the accused of the details of the charges therein contained, it is unquestionably error and an abuse of a Court's discretionary powers to deny him a full and direct Bill of Particulars with respect thereto.

Collins vs. United States, 253 Fed. 609 (CAA 9); Case vs. United States, 6 Fed. (2d) 530 (CAA 9); Perez vs. United States, 10 Fed. (2d) 352, 353 (CAA 9); Beck vs. United States, 33 Fed. (2d) 107 (CAA 8); United States vs. Halsey Stuart Co., 4 Fed. Supp. 662.

Extended argument on this point is unnecessary as the Bill of Particulars furnished by the Government is the best evidence of its own failure to properly supply the information necessary to appellant in the preparation of his defense. That the Bill of Particulars is as general and indefinite as the indictment itself, the following paragraphs will clearly disclose: I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XIII, XIV, XV, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XLIV, XLVI, XLVII, XLVIII. (T. of R. 54-70.)

To illustrate further, in paragraph 49 of the Bill of Particulars it is admitted by the Government that the financial statement mentioned in paragraph 3, Count Six of the indictment, and the one mentioned in paragraph 5 of said Count, are not identical, but at the same time the Government failed to fully and fairly disclose the difference. Again in paragraph 8 of the Bill of Particulars, the Government, in reply to a prop-

er demand by appellant for the identity of the parties to whom the false and fraudulent representations were made, responded that such representations were made, among other parties, to the Corporation Commission of Arizona and to Dunne's Insurance Reports, Louisville, Kentucky. Thus, for the first time appellant was informed of the claimed falsity of the reports and statements furnished to the Corporation Commission and to Dunne's Insurance Reports, but no effort was made to furnish appellant with copies of such statements, or to indicate in what particular the falsity consists.

The information sought by appellant concerned vital evidence in the possession of the Government and relied upon by it for conviction, and the Court's ruling on his objections to the Bill of Particulars and a motion for a supplemental bill denying him such information could not have resulted in other than prejudice to him in the preparation of his defense.

III

SPECIFICATION OF ERROR III (Assignments of Error VIII, T. of R. 168, Appendix ; XIII, XIV, XV, XVI, XVII, XVIII, XIX, XXIII, XXIV, XXVI, XXVII, XXVIII, XXX, XXXI, XXXII, XXXIII, T. of R. 177-189, Appendix ; XXXIX, XL, XLI, XLII, XLIII, T. of R. 191-194, Appendix ; L, LI, LII, LIV, LVI, LVII, LIX, T. of R. 197-202, Appendix ; LXIII, T. of R. 204, Appendix ; LXV, LXVI, LXVII, LXVIII, LXX, LXXI T. of R. 207-210, Appendix ; LXXIII, T. of R. 213, Appendix .)

Each of the assigned errors included within this specification deals with appellant's objections to the introduction of various government exhibits, consisting of the books, records, checks, check stubs, receipts, letters, minutes of stockholders, directors, and executive committee meetings, or with appellant's motions to strike such exhibits from the evidence. Generally one exhibit only is included in each assignment. The grounds of objection are contained in each assignment and will appear more fully in the argument.

For the convenience of the Court the Assignments of Error in their numerical order, the numbers of the exhibits, and pages in the Bill of Exceptions showing their identification, together with the grounds of appellant's objections, are listed as follows:

Assignments	*Exhibits*	*T. of R.*
VIII	12	264-266
XIII	8	297
XV	11	299
XVI	10	299-300
XVIII	9	300-302
XIX	7	304-305
XX	29	306-307
XXI	30	307-308
XXII	14	308-309
XXIII	17	310-311
XXIV	15	311
XXVI	22	313
XXVII	2 4	314-315
XXX	13	346-348
XXXI	18	349-350

XXXII	21	351-352
XXXIII	23	352-353
XXXIX	27D	385-387
XL	27E	389-391
XLI	26A	393-394
XLII	26B	396-398
XLIII	26C	399-401
L	52-53	446-456
LI	48A-29B	457-458
LII	54	460
LIV	34	466
LVI	33	481
LVII	41	482
LIX	57-58	512-515
LXIII	26D to 26Y	547-613
LXX	67	888-890
LXXI	68	898

Assignment	*Motion to Strike*	*T. of R.Page*
XVII	10, 11, 12, 19	300
XXVIII	22	315
LXV	26 and 27	666
LXVI	Above exhibits	666-667

DID THE COURT ERR IN ADMITTING IN EVIDENCE THE BOOKS, RECORDS, CANCELLED CHECKS, AND CHECK STUBS OF THE STATE SECURITIES CORPORATION AND THE UNION RESERVE LIFE INSURANCE COMPANY, AND IN DENYING APPELLANT'S MOTION TO STRIKE SUCH EVIDENCE, IN VIEW OF THE EVIDENCE THAT APPELLANT EXERCISED NO AUTHORITY OVER SUCH

RECORDS OR THE OFFICE PERSONNEL BY WHOM THEY WERE KEPT, AND HAD NO KNOWLEDGE OF THEIR CONTENTS?

Due to the relations which appellant actually bore to either the State Securities Corporation or the Union Reserve Life Insurance Company, we are persuaded that many of the exhibits listed above were inadmissible against him and that the Court, in overruling his objections to them, committed prejudicial error.

It is true that appellant was listed as an officer and director in both companies. Such offices as he held, however, were in name only, and carried with them no executive authority. His duties, other than to sign checks and stock certificates in blank for the convenience of the office personnel during his absence, were strictly those of a salesman. In this latter capacity, in common with the other salesmen, the greater portion of his time throughout the eight or nine years he was connected with the companies was spent in the field. The books and records of both companies were kept by the office personnel and by Earl Canning, a certified public accountant, under the sole supervision and authority of defendant R. F. Marquis upon whose integrity appellant fully relied. (T. of R. 806-807.) This was readily conceded by all the government's witnesses having knowledge of the facts, and such witnesses emphasized particularly appellant's lack of authority as an officer and his ignorance of many of the business details and records of these companies with which he was confronted at the trial. In fact, the testimony is conclusive that much of the evidence on which the government relied for conviction was delib-

erately withheld from appellant by the office management.

Ora T. Hill, who was employed as bookkeeper and office clerk from 1933 to 1938, testified:

" * * * I know that George H. Cornes was a salesman for State Securities Corporation. He was out in the field from Monday morning to Friday night and sometimes Saturday morning, selling stock and sometimes life insurance. It was the practice in the office for Mr. Cornes to sign certificates in blank. I do not know if certificate No. 912 was signed by Mr. Cornes in advance of its issuance. These certificates that were signed by Mr. Cornes were sometimes issued without his knowledge. Government's Exhibit No. 7 in evidence, the four financial statements, were made up partly by me and partly by Mr. Canning and were made from the records in the office kept by me and King Wilson. Mr. Cornes had nothing to do with the keeping of the books and never gave any orders to me as bookkeeper about how to keep them. He never directed me to make any entries in the books and I don't know if he ever saw the books. Mr. Cornes did not participate in any fashion or manner in the preparation of Government's Exhibit 7 in evidence. I am sure that the signature George H. Cornes, to the statement of 1934 is not his signature. * * * (T. of R. 332-333.)

" * * * All items pertaining to the insurance business were entered in the books and it shows the policies that the various agents wrote. It shows

the commissions and the salaries that were paid to any of the employees or officers of the company. It shows fees earned by George H. Cornes. He was like any other salesman for the company. He was paid a commission for insurance that he wrote and that was entered in the book. Mr. Cornes sold a considerable amount of insurance. I could not say how much he earned. There is an account in the ledger for Mr. Cornes. It is the black book. I think the book shows the amount of insurance that Mr. Cornes wrote during his connection with the company. The book does not cover the whole period. There is no entry in any of the books showing where George H. Cornes was ever paid a salary by either company. * * * (T. of R. 334.)

" * * * Mr. Cornes was seldom in the office to sign anything. Mr. R. F. Marquis employed me and arranged for my salary. He gave me my orders in the office. Mr. Cornes never at any time gave me any orders concerning the books nor so far as I know made any entries in the books. He very often left checks signed in blank. Mr. Cornes' signature is simply a counter-signature. The bank required the signature of Mr. R. F. Marquis. Mr. Cornes would have no knowledge of the checks issued on Monday's, Tuesday's, Wednesday's, Thursday's and Friday's. The deposits were made in the regular course of business under the authority and supervision of Mr. Marquis. Mr. Marquis negotiated the details, the loans of the company and to the best of my knowledge Mr. Cornes had nothing to do with them. The employees of both companies took their instructions from and worked under the supervision of R. F.

Marquis. * * *" (T. of R. 335.)

Gertrude Conway, another employee of the company from 1930 to 1937, serving in the capacity of private secretary to R. F. Marquis, testified:

" * * * I never drew any salary checks for either R. F. Marquis, Harry Marquis or George Cornes. I first went to work for the State Securities Corporation in 1930. I was employed and my salary fixed by Mr. Marquis. My principal duties were those of private secretary for Mr. Marquis. In addition to that I did general office work for the State Securities Corporation and some work for the Union Reserve Life Insurance Company after 1933. Mr. R. F. Marquis directed the activities in the office. I have done (313) some work for Mr. Cornes, but my orders were mainly from Mr. Marquis. I don't recall whether Mr. Cornes ever asked me for information concerning the business of either company. If he did ask me and it had been a matter of importance, I would have referred him to Mr. R. F. Marquis. It was not the custom among the girls in the office to refuse to tell Mr. Cornes about the business of the company. If the matter was of great importance, I always referred him to Mr. Marquis. I know that Mr. Cornes was supposed to spend most of his time out of town. He occupied one of the offices of the corporatoin. He left stock certificates signed up in advance and checks signed in advance when he left. George Cornes' name was required for the counter signature. The bank required R. F. Marquis' signature. Stock was issued without the knowledge of Mr. Cornes during his absence. Many checks were drawn by the company in his absence.

I made checks for both companies. Other girls made checks. * * * " (T. of R. 368-369.)

Harriet Walker, employed by the companies from 1933 to 1938 and whose duties it was to transcribe the minutes of stockholders, directors, and executive committee meetings and do general office work, testified:

"Mr. R. F. Marquis employed me to work for the Union Reserve Life Insurance Company. I was not employed by George H. Cornes, Mr. Hamilton or Harry Marquis. Mr. Marquis told me how much salary I would receive. None of the other defendants were present. My general duties were to take dictation, keep the minutes and to do general office work. After a while I took care of loans for the insurance company and entered some of the payments for the State Securities Corporation. Sometimes I drew checks. I received my instructions from Mr. R. F. Marquis. Mr. Hamilton, Harry Marquis and Mr. Cornes never gave me any particular instructions. The (333) general custom was to take up things with R. F. Marquis. He was the office manager. Mr. Cornes was in the field most of the time. He was a salesman. Mr. Marquis told us to come to him for final adjustment on anything. He told me to refer all officials making inquiry direct to him. He told me that if Mr. Cornes came to me for information in his official capacity he was to be referred to Mr. Marquis. I referred him to Mr. Marquis when he asked me questions. Mr. R. F. Marquis dictated all the various minutes I have identified. Sometimes the minutes would be dictated in December for the entire year. I went to work for the com-

pany in May, 1933, and continued until they closed. I know nothing about what happened at the meetings." (T. of R. 402-403.)

"I took dictation from several gentlemen in the office including Mr. R. F. Marquis. He dictated letters to me purporting to have been dictated by Mr. Cornes, and I placed the initials of Mr. Cornes on the letter as though he had dictated it. Either Mr. Marquis or myself would sign Mr. Cornes' name to such letters. * * * (T. of R. 409-410.)

The foregoing excerpts were practically all of the Government's evidence touching appellant's connection with either of these two companies in an executive capacity that would in anywise render him responsible for the books, records, or other details connected with the business affairs of the company outside of his particular activities as a salesman in the field. This evidence, we submit, was not sufficient as a basis for introduction of the above numbered exhibits against him.

In presenting our discussion on this assigned error, we are not unmindful of the enactment of Section 695 of Title 28, USCA, which purports to modify the preexisting rule of evidence relative to the qualifying evidence necessary to establish the competency of books and records of corporations as evidence against those responsible for their keeping. Except for the enactment of Section 695, in view of the Government's evidence on which the above exhibits were admitted against appellant, it would seem elementary that such exhibit were inadmissible against him for any purpose. 16 C. J. 743, Sec. 1527; McDonald et al vs. U. S. 241 Fed.

793, 800; Beck vs. U. S. 33 Fed. (2d) 107, (CCA 8); Morton Butler Timber Co. vs. U. S. 91 Fed. (2d) 884, 889.

It is questionable, at least, how far the requirements of this long established rule of evidence relative to the admissibility of books and records have been relaxed by Sec. 695, supra. Apparently the construction most unfavorable to appellant that could possibly be placed on this section would still require certain facts to appear with respect to the books and records of the State Securities Corporation and Union Reserve Life Insurance Company to render them inadmissible against him. Some of the facts made necessary by this section as a condition precedent to the introduction of such books and records are that there must first be an actual "act, transaction, occurrence, or event" to be entered in the books or records, and that "it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurence, or event or within a reasonable time thereafter." In both of these particulars the Government not only failed to meet the test established by this section but conceded through its witnesses that in a number of instances the exhibits and records introduced were not made for many months after the occurence of the transaction to which such records or entries related. This is particularly true with reference to the minutes of stockholders, directors, and executive committee meetings by which the Government sought to connect appellant with the affairs of the company and to establish his personal responsibility in connection therewith. These minutes are found generally in exhibits 26 and 27. The testimony by which the Gov-

ernment sought to qualify exhibits 26 and 27 for admission into evidence was given by Government witness Harriet Walker.

With reference to exhibit 27-D, she testified:

"I do not know whether the gentlemen mentioned in the purported minutes were actually present at the meeting. I do not know that the business purported to be transacted as reflected by the minutes was in fact transacted at the meeting. William C. Fields was attorney for the company. The minutes are not signed. I do not know how long after May 15th the minutes were dictated. It sometimes happened that the minutes were not dictated until the close of the year." (T. of R. 386.)

Regarding exhibit 27-E, she testified:

"The minutes of March 29, 1937, were unsigned. I wrote the minutes at the dictation of R. F. Marquis. I do not know when with respect to March 29, 1937. The typewritten name, George H. Cornes, Secretary, is annexed to the minutes. His signature is not there. Either Mr. Marquis dictated it there or I put it there because Mr. Cornes was the proper officer to have his name at the bottom. I was appointed Assistant Secretary. I do not remember if I attended the meeting. I cannot say what business was transacted. I don't know if I ever presented them to George H. Cornes for his signature. I don't know that George H. Cornes ever saw the minutes prior to now. I cannot testify that George H. Cornes was present at the meeting." (T. of R. 390-391.)

With reference to exhibits 26-A, 26-B, and 26-C, her evidence was:

26-A. "I am not sure that a meeting of the stockholders of the State Securities Corporation was held on February 9, 1937. I do not know who was present. I was not present myself. All I know is the fact that the minutes were dictated to me by Mr. Marquis. I don't know whether Mr. Cornes attended the meeting. The minutes are unsigned. Mr. R. F. Marquis was Secretary-Treasurer of the State Securities Corporation at that time, he dictated the minutes to me and I wrote them. I don't know when after that they were dictated. I don't know what business was transacted at the meeting." (T. of R. 393-394.)

26-B. "I typed the minutes of the meeting of February 28, 1938, a part of Government's Exhibit 26 for identification, at the direction and dictations of Mr. Marquis. They were written up before I left the company. I didn't go back afterwards and write up any minutes. My answer as to who attended the meeting and my knowledge of it is as the same to other minutes that I wrote. * * * I did not attend the meeting. I did not know who was there or anything about the business that was purportedly transacted. * * * I don't know that George H. Cornes attended the meeting. I do not know that he ever saw the minutes. They were dictated to me by R. F. Marquis and transcribed by me. I put down the things correctly as dictated to the best of my ability. They are not signed." (T. of R. 396-397.)

26-C. These minutes are not signed and are made under the same circumstances as the other minutes. I do not know who was present. I typed the letter from State Securities Corporation to the Union Reserve Life Insurance Company which is also unsigned. It was dictated to me. I do not know where the original is. I marked this one copy. It is not in the minutes of the Union Reserve Life Insur-- ance Company. * * * I have no way of knowing that George H. Cornes ever attended any such meeting or that he saw the minutes after they were dictated and written. The letter has the typewritten name George H. Cornes, President, but I am sure R. F. Marquis dictated it to me. I don't know if Mr. Cornes ever saw the letter. I don't know when I typed the minutes. Sometimes they were not typed for months after the date they bear. The transaction concerning the mortgages might have taken place after the meeting." (T. of R. 400-401.)

And generally with respect to all of the other minutes contained in exhibits 26 and 27, she testified:

" * * * Mr. R. F. Marquis dictated all the various minutes I have identified. Sometimes the minutes would be dictated in December for the entire year. I went to work for the company in May, 1933, and continued until they closed. I know nothing about what happened at the meetings." (T. of R. 403.)

"I took dictation from several gentlemen in the office including Mr. R. F. Marquis. He dictated letters to me purporting to have been dictated by

Mr. Cornes, and I placed the initials of Mr. Cornes on the letter as though he had dictated it. Either Mr. Marquis or myself would sign Mr. Cornes' name to such letters. * * *" (T. of R. 409.)

We respectfully submit that such evidence as the above was not sufficient even under the provisions of Section 695, supra, to qualify such minutes as competent evidence against this appellant, and that appellant's objection to their reception in evidence should have been sustained.

Furthermore, in view of appellant's testimony that many of the meetings to which the purported minutes related were never actually held (T. of R. 805, 806), appellant's motion to strike exhibits 26 and 27 made at the close of the evidence should have been granted.

With reference to the letters of the company purporting to bear appellant's signature and received in evidence against him, the witness Harriet Walker testified generally that both she and the defendant R. F. Marquis signed appellant's name to them. (T. of R. 409.) This was particularly true in the case of exhibit 54, which was a letter addressed to the witness Fink. Appellant himself denied its authorship (T. of R. 799), and the defendant R. F. Marquis confessed that he had prepared the letter and admitted that the signature was not that of appellant (T. of R. 707).

Exhibits 33 and 41, consisting of an envelope and letter addressed to the Government's witness Mary E. Bonar, and the basis of Count 3 of the indictment, and exhibit 34, consisting of a letter addressed to Gerald

Palmer, and the basis of Count 4 of the indictment, on both of which counts appellant was convicted, were written and signed by the defendant R. F. Marquis, and appellant's connection with either letter, or the mailing of them, was not even remotely established. For this reason alone both letters should have been rejected as evidence against appellant.

Another, and we believe a very meritorious argument against the admissibility of the letters, and also of the Fink letter (54), is that neither of these letters was written or mailed in execution of a scheme to defraud the respective addressees, or anyone else. By the provisions of Sections 338, 18 USCA, Criminal Code 215, such purpose is essential to the offense charged. If, however, such fraud has already been committed and the letter is sent merely to placate the victim, or hide the evidence of the crime, there is no offense under the statute. United States vs. Smith, 29 Fed. (2d) 926-928; Norton vs. United States, 92 Fed. (2d) 753 (CCA 9).

In United States vs. Smith, supra, the Court said:

> "As the great array of mail fraud prosecutions that have been sustained in the federal courts are reviewed, it will be found in every case that there was a definite scheme and letters to execute a scheme, clearly distinguishable from a crime committed and letters to hide and cover it up."

This was clearly the situation in the case at bar. The addressees of exhibits 54, 33, 41, and 34 had been sold their respective stock holdings long prior to the

mailing of the letters, and any fraud intended to be perpetrated on them was already accomplished. The only purpose the letters in question could then serve was to reassure them of the soundness of their investment.

This argument will be further extended under the appropriate assignment of error to which it relates, namely, the failure of the Court to direct a verdict of acquittal on Counts 3 and 4 of the indictment.

Exhibit 11 was shown to contain entries that the witness, on whose identification it was admitted in evidence, testified were made by other and unidentified parties. (T. of R. 298.) Exhibit 14 was shown to contain items prior to the time and Union Reserve Life Insurance Company was acquired by the State Securities Corporation, and as to such items the witness was unable to testify that they were made in the regular course of business. (T. of R. 308, 309.) Likewise, exhibits 17 and 22 were not identified as books or records kept in the ordinary and usual course of business. (T. of R. 310, 315.)

The further objection to the introduction of exhibits 8, 9, 10, 11, 13, 14, and 15, identified by the witness King Wilson, is based on the Court's action in excusing this witness from attendance upon the Court and permitting him to leave the jurisdiction prior to the introduction of such exhibits, whereby the appellant, in common with the other defendants, was precluded from any cross-examination of the witness on the entries contained in the exhibits. (T. of R. 213, 276.)

This latter objection, however, will be presented more fully under the succeeding specification of error.

The Government cannot justify the admission of these books and records on the grounds that they are acts or declarations of co-conspirators. It is the general rule, which needs no citation of authorities to sustain it, that before such acts and declarations may be received in evidence the existence of the conspiracy must be established, and that the party against whom such acts and declarations are offered is a party to such conspiracy. The mere recital in the indictment of a conspiracy will not dispense with proof of such conspiracy.

As the question of the sufficiency of the evidence to establish a conspiracy will be enlarged upon in our argument under specification of error No. VI, it will suffice to state at this time that no conspiracy involving appellant to do the things charged in the indictment was shown by the evidence. A fair inference at most from the Government's case is that appellant was indicted because he chanced to hold an office in each company and because the companies became insolvent.

In concluding our argument under this specification of error, we feel that any construction of Section 695, supra, which permits the admission of books and records against the accused under the circumstances which surrounded the introduction of many of the above exhibits in this case, will meet with constitutional difficulties under the Sixth Amendment to the Constitution.

IV

SPECIFICATION OF ERROR IV. (Assignment of Error IX, T. of R. 169; Appendix.....).

The Court erred in refusing to keep the government's witness King Wilson in the jurisdiction of the Court for cross-examination by the defendants when the books and records which he had identified should be by the government offered in evidence, for the reason that at the time the Court excused the witness King Wilson he had identified some seven exhibits consisting of books of account and records. The said books had not been offered in evidence and no materiality of any figure in the books, or the relevancy thereof had been pointed out, and this defendant appellant was entitled to cross-examine the said government witness King Wilson as to any entries made by him in such books, and generally (176) as to such books and his knowledge of the transactions therein reflected and claimed by the government to be material, when the government should point out the claimed materiality thereof, or introduce the same in evidence, and in excusing said witness from attendance on the Court, to which ruling defendant appellant duly excepted.

DID THE COURT ERR IN REFUSING TO KEEP THE GOVERNMENT'S WITNESS KING WILSON IN ATTENDANCE UPON THE COURT FOR CROSS-EXAMINATION BY THE APPELLANT WHEN THE BOOKS AND RECORDS WHICH HE HAD IDENTIFIED SHOULD BE BY THE GOVERNMENT OFFERED IN EVIDENCE

AND EXCUSED SAID WITNESS FROM FURTHER ATTENDANCE UPON THE COURT OVER THE OBJECTION AND EXCEPTION OF THE APPELLANT?

The testimony of the witness King Wilson in its entirety will be found on pages 261 to 277 of the Transcript of Record. Because of the possible prejudice worked against the appellant by the action of the trial court in summarily dismissing the witness and permitting him to leave the jurisdiction without according appellant ample opportunity to cross-examine him, we respectfully request that this assigned error be given the fullest consideration by this Court.

It will be noted that the witness identified exhibits 8, 9, 10, 12, 13, 14, 15, consisting of the principal books and records of the Union Reserve Life Insurance Company and the State Securities Corporation, and that he was the bookkeeper employed by these companies from 1934 to 1937 and responsible for the entries made in the exhibits during that period. Incidentally, those years are the ones stressed particularly by the Government in the trial. One only of these exhibits was offered in evidence while the witness was available for cross-examinatoin, although no particular reason appears in the record why the other exhibits identified by the witness should not have been offered likewise and an opportunity then and there accorded appellant to examine him fully touching the entries in such exhibits by which appellant was later to be condemned.

No citation of authorities is necessary to impress upon this Court the vital importance to the accused of

the instrument of cross-examination. It is not a mere privilege to be granted or withheld at the whim and caprice of the trial court, but a right to be exercised at the election of the accused. A few general citations will suffice to stress the importance attached by the various court to a full and unrestricted exercise of this right.

In the case of Prewitt vs. State, 126 So. 824, 156 Miss. 731, the Supreme Court of Mississippi said:

> "It is of the utmost importance in the administration of justice that the right of cross-examination be preserved unimpaired. It is the law's most useful weapon against fabrication and falsehood. As a test of accuracy, truthfulness, and credibility of testimony, there is no other means as effective."

Again, in the case of State vs. Ritz, 211 Pac. 298, 65 Mont. 180, 187, the Supreme Court of Motana used this language in stressing the importance of cross-examination:

> "Cross-examination is the most potent weapon known to the law for separating falsehood from truth, hearsay from actual knowledge, things imaginary from things real, opinion from fact, and inference from recollection, and for testing the intelligence, fairness, memory, truthfulness, accuracy, honesty, and power of observation of the witness. It has become a truism in the legal profession that 'The testimony of a witness is not stronger than it is made by his cross-examination'."

The reasons assigned by the District Attorney as the basis for his request that the witness be excused can hardly transcend the importance to the appellant of the continued presence of the witness in Court, and of appellant's right to examine him fully touching every detail of the exhibits when they should be admitted into evidence. This witness was the one person living who had knowledge of all the facts relative to the entries which he had made in the books; many of which entries the Government was later to claim were false and misleading. He alone could have enlightened the jury upon the circumstances surrounding the making of these entries, the source of his information for the entries, by whose direction any false or misleading entries were made, and any and all other details that a searching cross-examination might reveal with respect thereto.

In answer to this argument it will undoubtedly be the position of the Government that an offer was made to permit cross-examination of the witness out of the usual order. There is no question that such offer was made, but just what was implied by the term "out of order" remains an enigma; for, when counsel for one of the defendants attempted to inquire concerning certain entries in the exhibits which the witness had identified, he was met instantly with an objection by the District Attorney that such question was improper because the exhibit was not yet in evidence (T. of R. 271). No doubt the objection was well taken, but it was hardly consistent with the District Attorney's announced intention to permit cross-examination "out of order." In the mind of the District Attorney, at

least, the term "out of order" did not imply inquiries into any exhibit not yet offered in evidence by the Government.

Had the Court, in the exercise of his undoubted power to direct the order of proof, required the District Attorney to introduce all of the exhibits which the witness had identified while the witness was still on the stand, or, if additional qualifying evidence was necessary, to forthwith produce it to the end that such exhibits be received in evidence while the witness King Wilson was still in attendance upon the Court, this complication would not have arisen, the Government would not have been put to great expense on account of the witness, and the witness himself could have departed in seasonable time upon his private business.

The importance to this appellant of the opportunity to elicit all the facts surrounding the entries in the exhibits within the knowledge of the witness, particularly in view of the peculiar relation appellant sustained towards these companies, cannot be over emphasized. In refusing him this opportunity by dismissing the witness King Wilson and permitting him to leave the jurisdiction under the circumstances as disclosed by the record, we are fully persuaded that the error thus committed can be cured only by the granting of a new trial. Alford vs. U. S. 51 S. Ct. 218, 282 U. S. 687, 75 L. Ed. 624; Cossock vs. U. S. 63 Fed. (2d) 511 (CCA 9); Arnold vs. U. S. 94 Fed. (2d) 499, 506 (CCA 10); Minner vs. U. S. 57 Fed. (2d) 506; Gallaghan vs. U. S. 299 Fed. 172; Kirk vs. U. S. 280 Fed. 506.

V

SPECIFICATION OF ERROR V (Assignments of Error LXIX, LXX, LXXI, T. of R. 209-210, Appendix.....).

These assigned errors relate to the ruling of the Court permitting the Government's witness E. P. Hair to testify in rebuttal concerning entries in the books of the Union Reserve Life Insurance Company of transactions purportedly had with J. Elmer Johnson whereby such party was paid certain sums of money by said companies, and to the admission of Governments Exhibits Nos. 67 and 68 in evidence. The grounds of objection are that such rebuttal evidence was not proper, no foundation had been laid for such evidence, it was not impeachment of any witness, and was on a collateral matter.

DID THE COURT ERR IN RECEIVING OVER APPELLANT'S OBJECTION TESTIMONY OF GOVERNMENT WITNESS E. P. HAIR ON REBUTTAL CONCERNING TRANSACTIONS BETWEEN THE UNION RESERVE LIFE INSURANCE COMPANY AND J. ELMER JOHNSON?

The rebuttal testimony of the Government's witness E. P. Hair, during which Exhibit No. 67 was received in evidence, is extended in full on pages 888 to 893 of the Transcript of Record. Exhibit No. 68 was introduced by the Government on the sur-rebuttal testimony of the defendant R. F. Marquis (T. of R. 897-898.)

At the conclusion of the defendants' case, the Government offered evidence of a decidedly impeaching

character against one J. Elmer Johnson. This party had formerly been employed in the Securities Division of the Corporation Commission of Arizona, but had not appeared as a witness in the case, and his name was only vaguely mentioned by one of the defendants (R. F. Marquis) while testifying in his own behalf. (T. of R. 670.) No refernce to any transaction had by these companies with J. Elmer Johnson or in which he participated, or to any money paid to him, was included in the indictment, Bill of Particulars, or the Government's case in chief. Furthermore, no evidence had been submitted by the defendants, particularly this appellant, which this so-called rebuttal testimony could have possibly contradicted or impeached.

Any connection which J. Elmer Johnson had with these companies or with any of the defendants, and the payment of any money to him or the purpose of such payment, were strictly collateral issues, and the evidence given by Government's witness E. P. Hair on rebuttal concerning such matters could serve but one purpose, namely, to leave an inference with the jury that the defendants, particularly the defendant R. F. Marquis, had been paying bribes to J. Elmer Johnson to influence his official acts when dealing with the companies. That such inference was erroneous and that the defendant R. F. Marquis in sur-rebuttal attempted to dispell it and set forth the relations which J. Elmer Johnson bore to the companies in their true light, did not lessen the gravity of this error. Coming as it did, however, in the concluding minutes of a month long trial, the defendants were taken completely by surprise and had no opportunity to call J. Elmer

Johnson to testify, or to produce other evidence to rebutt this unjust but exceedingly damaging inference.

No evidence material to the real issues of this case could have possibly prejudiced the minds of the jury against the defendants as this testimony of the witness E. P. Hair undoutbedly did, and we submit that this incident alone constitutes sufficient grounds for reversal of this case. Cossack vs. United States, 63 Fed. (2d) 511 (CCA 9); United States vs. Sager, 49 Fed. (2d) 725, 729 (CCA 2); Diehl vs. United States, 96 Fed. (2d) 545, 548 (CCA 8); Boyd vs. United States, 142 U. S. 450, 12 Supreme Court 292, 295, 35 L. Ed. 1077; Commonwealth vs. Campbell, 155 Mass. 537, 30 N. E. 72; State vs. Berger, 121 Iowa 581, 96 N. W. 1094; State vs. Elwood, 17 R. I. 763, 24 Atl. 782.

Government's Exhibit No. 68 (T. of R. 898) was an attempted impeachment of the defendant R. F. Marquis in sur-rebuttal on an immaterial and collateral issue, and therefore appellant's objection to its admissibility should have been sustained. Diehl vs. U. S. Supra.

VI

SPECIFICATION OF ERROR VI. (Supplemental Assignment of Error 3, T. of R. 23; Appendix.....)

By this assignment of error appellant complains of the Court's ruling denying appellant's motion for a directed verdict of acquittal on Counts 3, 4 and 6 of the indictment on the grounds generally that there was no substantial showing to connect appellant with the

scheme to defraud, or to show that appellant made any false or fraudulent representations, or to show any intent on the part of appellant to defraud by means of false pretences as charged in the indictment, or that he conspired so to do; that the evidence as a whole shows that the representations and promises made by defendant in the sale of bonds and stock were truthful, and consistent with the facts existing at the time of such sale.

DID THE COURT ERR IN DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT MADE AT THE CLOSE OF THE WHOLE CASE?

In our discussion of this assigned error we refer to and adopt all the pertinent portions of our arguments advanced and the excerpts of the evidence quoted under specification of error III.

There is no question but that appellant was identified with both the State Securities Corporation and the Union Reserve Life Insurance Company, both as a nominal officer and as a salesman, throughout their existence, and by reason thereof was more or less closely associated with the other defendants. And there is no doubt but that he frequently discussed business policies and various details of the business enterprise with not only the other defendants but also with other directors and persons not included in the indictment.

In his capacity as salesman he unquestionably sold bonds and stock of the State Securities Corporation and the life insurance of the Union Reserve Life In-

surance Company. He estimates his sales of life insurance for the latter company to be at approximately $750,000. This item alone would, and did, entitle him to a substantial portion of the money which, it was charged, he withdrew from these companies.

These facts alone, however, do not necessarily imply a scheme to defraud on his part or a conspiracy with the other defendants as charged in the indictment.

The defendant R. F. Marquis on the other hand was the active head of both companies. He was an accountant and actuary and thoroughly experienced in the field of insurance. (T. of R. 668-667.) On him alone rested the responsibility for the bookkeeping, the preparation of the various financial statements of the companies received in evidence, and the general conduct of the business of the companies.

The Government, to show the existence of a scheme to defraud and a common understanding among defendants, stressed particularly the falsity of certain items in the books of the companies and in the financial statements prepared therefrom and received in evidence, and of appellant's use of such misleading and false reports in the sale of stocks and bonds. That appellant did employ and display such statements we do not deny, and in doing so he relied faithfully upon the integrity of both R. F. Marquis and Earl Canning, the certified public accountant employed by the company. (T. of R. 823, 824.)

Nowhere in the Government's case, however, is there any showing that appellant connived or conspired with

any one to falsify the books or statements, or that he knew or had any reason to believe that false entries were contained in either. Certainly the knowledge of the falsity of such items cannot be imputed to him, to render him criminally responsible, solely because he was an officer and director in the companies. Since the false items and statements pointed out above are the subjects of Subdivisions 4, 6 and 7, of Count 1 of the indictment, in view of the failure of the Government to connect appellant with them, it will not be necessary to further discuss those subdivisions.

The other grounds relied upon to connect appellant with the alleged scheme and conspiracy to defraud are the misrepresentations charged against him in Subdivisions 1, 2, 3, 5, and 8 of Count 1 of the indictment. Subdivisions 1 and 2 deal with the alleged misrepresentations relative to the payment of dividends, and to prove appellant's guilt in connection therewith, the Government called five witnesses to whom appellant had sold stock. The testimony of these witnesses, as reflected by the record, will be the best evidence of the fact of misrepresentations. On cross-examination the witnesses testified as follows:

P. H. Link (T. of R. 463). "Mr. Cornes said that no dividends were being paid, but that all earnings were being put back into the business. I was not paid any dividends. He said the officers did not draw salaries. Mr. Cornes didn't say there would be dividends on any definite date."

Gerald Palmer (T. of R. 467, 468). "As I recall, it was April, 1937, that Mr. Cornes and Mr. Hamil-

ton called upon me. Mr. Hamilton opened the conversation. Mr. Cornes didn't have as much to say as Mr. Hamilton. * * * They led me to believe that there would be a stock dividend or bonus paid in the future. They also said that the cash bonus would be accumulated and paid out at various times. (376) That is, after stock dividends were earned, they would be paid. They didn't say anything about the amount to be paid. They didn't say a five per cent stock bonus would be paid at some future date and that my stock would probably earn dividends in the future."

May E. Bonar (T. of R. 487). * * * Mr. Cornes explained it was a new company and the ultimate object was to finance the State Securities Company so it could get a life insurance company. Mr. Cornes didn't in any conference represent that there would be immediate dividends, but he said that perhaps in two or three years there might be two or three dollars, in dividends paid. No definite time was fixed."

L. F. Haymes (T. of R. 542). "I purchased two bonds in March, 1931. I took over another bond Mr. Brown had not paid for. The bonds were exchanged for stock. Mr. Cornes in June, 1937, sold me 25 shares and I paid one-half of the purchase price, or two Hundred Fifty ($250.00) Dollars, and executed a note for the balance. I had gotten acquainted with Mr. Cornes sometime before that. He told me he would make some purchases for me and the purchases could be applied on the $250.000 note. * * *

He told me that if I didn't want it after the first year he would take it back. He said there would be a cash dividend. He didn't say stock bonus of five per cent. I bought the stock on his promise to take it back if I didn't want it. After the companies failed, I told Mr. Cornes that I expected him to reimburse me for the $250.00 cash. He agreed that he would. He gave me a note for it. He explained that he had no money and I have his note for $250.00."

While appellant sold stock to the witness L. Joe Hall (T. of R. 517), no question concerning the representations made to him by appellant to effect such sale was asked by the Government.

Thus, of the five witnesses called by the Government against appellant to prove his guilt on Subdivisions 1 and 2, one only (Haymes) even remotely substantiated the charge contained in these subdivisions. And a careful analysis of his evidence will reveal that extraneous considerations may have influenced the witness to testify as he did.

With respect to Subdivision 3 of Count I, there is no question, either, that appellant made the representations therein charged, or that such representations were literally true. At least no witness called by the Covernment against appellant, so far as the record discloses, testified that he understood from such representations that salesmen for the companies, if they chanced to be officers, were not receiving the usual commissions paid generally to salesmen on the sale of stocks, bonds, or life insurance.

In Subdivision 5, the charge is that certain existing mortgages which the life insurance company held on lands controlled by appellant and other defendants as trustee were increased without the investment of additional funds of the company. Such increase, however, was based on an appraisal of the lands previously made, the accuracy of which was not disputed by the Government. (Def. Exh. AG 1.) This was a legitimate transaction and fraud cannot be predicated upon it. U. S. vs. McNamara, 91 Fed. (2d) 986, 990 (CCA 2).

In the remaining subdivision, No. 8, we fail to gather the significance of the allegation therein contained. It is true that 50,000 shares of the capital stock of the State Securities Corporation had been allocated to certain defendants but, due to certain restrictions of the Corporation Commission of Arizona, not issued to them. The stock actually issued and outstanding on June 30, 1937, as the Government's evidence tended to show, amounted to 19,022 shares. (Exh. 19). Be that as it may, this representation was contained in the books and statements of the companies above referred to, for which appellant was not responsible, and there is no evidence in the record showing that appellant ever wilfully made such representations.

We stated in our argument under our third specification of error that, as we interpreted Section 338, Title 18, USCA, Section 215, Criminal Code, and the decisions of our Courts relative to the proper instruction of that act, the conditions under which the letters mentioned in counts 3 and 4 of the indictment were mailed did not meet the requirements of the statute.

What value or effect the mailing of the letters mentioned in these counts had in promoting or furthering the scheme to defraud charged against appellant is beyond our ken. As to the addressees of the letters, any intended fraud against them had aready been accomplished. As to any other person, or the public generally, the letters were meaningless. The only inference unfavorable to the appellant we can possibly deduct, as we stated in our argument under specification of error III, is that the letters were intended merely to lull the respective addressees into a sense of security regarding their investments.

On the whole we cannot concede that the ultimate facts of this case with respect to the mailing of the letters charged in counts 3 and 4 constitute a violation of Section 338, supra, and for that reason the Court should have sustained our motion for a directed verdict as to those counts. 'United States vs. Smith, 29 Fed. (2d) 926-928.)

We come now to the question of the amount of money withdrawn from these companies by appellant during the eight or nine years he was connected with them. Withdrawals were made by issuance of company checks and by cash items from the office cash fund on regular withdrawal receipts, and presumably charged to the proper account on the books of the company.

In his testimony, the Government witness Hair computed the total of appellant's withdrawals at approximately $88,000.00. Appellant, on the other hand, estimated his withdrawals at not to exceed $50,000.00 to $60,000.00, including approximately $25,000.00 travel expenses.

The explanation of this discrepancy apparently lies in the different sources from which these figures were taken by the respective parties. On this point the witness Hair admitted that he had arrived at his figures from the book entries, check stubs, and cash reecipt stubs exclusively, and that he had not consulted the cancelled checks or cash receipts to ascertain whether such items were, in fact, properly charged against appellant. (T. of R. 621.) Appellant based his figures strictly on the cancelled checks and cash receipts themselves. Unfortunately, the Government had not supplied appellant with the list of items which it claimed he had withdrawn, and appellant learned of such items for the first time through the testimony of the witness Hair and defendants' Exhibit 1 which he had prepared. (T. of R. 802.)

On investigation of the checks themselves as disclosed by defendants' Exhibit No. 1, it was discovered that, while numerous checks had been charged against appellant on the books of the company, purposely or inadvertently, such checks were in fact withdrawals of other parties. Check No. 8206 of the State Securities Corporation in the sum of $207.19 is a case in point. While this check was undoubtedly charged as a withdrawal against appellant, it was in fact issued to another defendant, Harry S. Marquis, and by him used to pay the premium on his life insurance policy to the Occidental Life Insurance Company. This, the defendant Harry S. Marquis admitted. T. of R. 867.)

It is not necessary in this brief to review all the evidence relative to this subject, as the testimony of the

defendant concerning the items improperly charged against him will be found in detail on pages 801-805 of the transcript. We mention the subject of withdrawals, however, because of the emphasis placed on them by the Government as the motive actuating appellant in the commission of the crime charged against him. Had the appellant benefited at the expense of these companies in the amount charged against him on the books, this would undobutedly have been some evidence of his guilt. It is clear, however, that appellant did not withdraw such sums from the company and that any money withdrawn by him was properly earned as commissions in the sale of stock, bonds, and life insurance.

Moreover, we are persuaded that the appellant himself was the victim of the cupidity of those with whom he was associated in the companies, and that the parties responsible for the offense against him are likewise chargeable with the false and misleading entries in the books and statements of the companies on which the indictment is this case is based.

On this complete record we feel that the Court erred in overruling appellant's motion for a directed verdict of acquittal, and in any event, that the judgment of conviction against appellant should be reversed and appellant granted a new trial on the manifest errors committed by the trial court.

Respectfully submitted,

GEO. T. WILSON,
Attorney for Appellant.

APPENDIX

Assignments of Error Relied Upon By the Appellant George H. Cornes in the Foregoing Brief

I

The Court erred in overruling this defendant's demurrer to the indictment upon the grounds and for the reasons that the said indictment was and is insufficient in the following particulars:

(a) Said indictment does not, nor does any count thereof, state facts sufficient to constitute an offense against the United States or the laws thereof.

(b) Said indictment does not, nor does any count thereof state facts sufficient to constitute an offense by this defendant against the United States or the laws thereof.

(c) The first count of said indictment does not state facts sufficient to constitute an offense against the United States or the laws thereof.

(d) The first count of said indictment does not (168) state facts sufficient to constitute an offense by this defendant against the United States or the laws thereof.

(e) The second count of said indictment does not state sufficient to constitute an offense against the United States or the laws thereof.

(f) The second count of said indictment does not state sufficient to constitute an offense by this defendant against the United States or the laws thereof.

(g) The third count of said indictment does not state facts sufficient to constitute an offense against the United States or the laws thereof.

(h) The third count of said indictment does not state facts sufficient to constitute an offense by this defendant against the United States or the laws thereof.

(i) The fourth count of said indictment does not state facts sufficient to constitute an offense against the United States or the laws thereof.

(j) The fourth count of said indictment does not state facts sufficient to constitute an offense by this defendant against the United States or the laws thereof.

(k) The fifth count of said indictment does not state facts sufficient to constitute an offense against the United States or the laws thereof.

(l) The fifth count of said indictment does not state facts sufficient to constitute an offense by this defendant against the United States or the laws thereof.

(m) The sixth count of said indictment does not state facts sufficient to constitute an offense against the United States or the laws thereof.

(n) The sixth count of said indictment does not state facts sufficient to constitute an offense by this

defendant against the United States or the laws thereof.

(o) Said indictment does not, nor does any (169) count thereof state facts sufficient to constitute the offense described in Section 37 of the Criminal Code (18 U. S. C. A., sec. 88).

(p) Said indictment does not, nor does any count thereof, state facts sufficient to constitute the offense described in Section 37 of the Criminal Code (18 U. S. C. A., Sec. 88).

(q) Said indictment does not, nor does any count thereof, state facts sufficient to constitute any scheme or artifice to defraud or for obtaining money or property by means of false, misleading or fraudulent representations, pretenses or promises.

(r) Said indictment does not, nor does any count thereof, state facts sufficient to constitute any conspiracy, combination or confederation to commit any offense against the United States or the laws thereof.

(s) Said indictment, and each separate count thereof, is duplicitous in that each of said counts states the commission of more than one offense against the United States or the laws thereof, if any such offense is stated at all.

(t) Said indictment, and each separate count thereof, is so vague, uncertain and indefinite as not to apprise this defendant of the offense or offenses with which he is sought to be charged.

(u) Said indictment, and each separate count thereof, is so vague, uncertain and indefinite that this defendant cannot properly prepare his defense thereto.

(v) Said indictment, and each separate count thereof, is so vague, uncertain and indefinite as to be of no protection to this defendant in the event of a second prosecution for the same offense or offenses sought to be charged therein.

(w) Said indictment, and each separate count thereof, is so vague, uncertain and indefinite as not to apprise (170) this defendant of the part or parts of said alleged scheme or artifice to defraud, if any, with which he is charged with devising, intending to devise, or participating in.

(x) Said indictment and each separate count thereof, is so vague, uncertain and indefinite as not to apprise this defendant of what participation, if any, he is charged with having had in the mailing, causing to be mailed, delivery, or causing to be delivered, of any of the indictment letters.

(y) Said indictment, and each separate count thereof, is so vague, uncertain and indefinite as not to apprise this defendant of what part or parts of said alleged scheme or artifice to defraud, if any, were or are fraudulent or false or illegal or wrongful.

(z) Said indictment, and each separate count thereof, is so vague, uncertain and indefinite as not to apprise this defendant of how, or why, or by reason of what facts, if any, the various parts alleged to have

been embraced in said alleged scheme or artifice to defraud, were or are, or any of them was or is, fraudulent or false or illegal or wrongful.

(1-a) Said indictment, and each separate count thereof, is so vague, uncertain and indefinite as not to apprise this defendant whether he is charged with devising or intending to devise only one scheme or artifice to defraud, or more than one such scheme.

(1-b) Said indictment, and each separate count thereof, is so vague, uncertain and indefinite as not to apprise this defendant of how, or in what manner or by reason of what facts, if any, the alleged scheme or artifice to defraud, or any part thereof, tended to, or did, defraud all or any of the alleged "victims" referred to in said indictment. (T. of R. 158.)

II

The Court erred in overruling the objections of this defendant to the Bill of Particulars, as filed herein, and in (171) denying this defendant's motion for an order requiring the government to supplement the same, for the reasons,

(a) That paragraphs I, II, III, IV, V, IX, XVI, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII and XXVIII of the Bill of Particulars, as filed, and each of them, severally and separately are evasive, indefinite, incomplete and constitute conclusions of law and do not fully or fairly disclose the information sought by this defendant in his motion for a Bill of Particulars, and the motion of this de-

fendant requiring the government to file a supplemental Bill of Particulars fully and fairly setting forth the information requested by this defendant in his motion for a Bill of Particulars should have been granted.

(b) That paragraphs VI, VII, VIII, IX, XII, XIII, XIV, XV, XXXIX, XLIV, XLVI, XLVII, XLVIII of the Bill of Particulars, as filed, severally and separately are evasive, indefinite, uncertain, incomplete and constitute conclusions of law and do not fairly disclose the information requested by this defendant in his motion for Bill of Particulars, and the Court erred in denying this defendant's motion for an order requiring the government to file a supplemental Bill of Particulars fully, fairly and completely disclosing the information requested by this defendant in his motion for a Bill of Particulars.

(c) The Bill of Particulars, as filed, discloses that the financial statement referred to in paragraph numbered 5 of the sixth count of the indictment, and the financial statement referred to in paragraph numbered 3 of the sixth count of the indictment were not identical and the difference between the two statements was not fairly and fully disclosed by the government's Bill of Particulars, as filed, and this defendant was entitled to have the said financial statement, or statements, set forth in said Bill of Particulars in order that he might properly prepare his defense to the sixth count of the indictment.

(d) This defendant was entitled to have set out (172) in a supplemental Bill of Particulars a copy of

all written statements, representations or reports claimed to have been made by any of the defendants to the Corporation Commission of the State of Arizona and to Dunne's Insurance Reports, Louisville, Kentucky, which were referred to in Paragraph VIII of the Bill of Particulars as filed, and claimed by the government to contain false, fraudulent, misleading representations and promises, in order that this defendant might properly prepare his defense to the indictment.

(e) By the Court's overruling of said objections and denial of this defendant's motion for a supplemental and further Bill of Particulars, this defendant was forced to proceed to trial without information concerning the particulars of the offense with which he charged, necessary to the preparation of his defense. (T. of R. 162.)

VIII

The Court erred in admitting in evidence government's Exhibit No. 12, the purported cash journal of the Union Reserve Life Insurance Company for the year 1936, over the objection of defendant appellant, for the reason it had not been properly identified; that as to him there was no showing that he had anything to do with the bookkeeping system of the company and no showing that the company was the agent of defendant appellant; that as to him it was pure hearsay; that no proper foundation had been laid; that there was no showing that the entries appearing in the Exhibit were either original entries or first permanent entries of the transaction, which such Exhibit purports

to portray; that there was no attempt to produce any of the persons who made original entries or persons having knowledge of the facts and said entries are not corroborated by any persons having personal knowledge of the facts, and no showing that such persons are dead, insane or beyond the reach of process; that said Exhibit was not admissable under Section 695, Title 28, U. S. C. A. for the reason that said act unconstitutionally attempts to shift the burden of proof from the (175) government to the defendant; that said act is unconstitutional, null and void in that it violates the sixth amendment to the Constitution of the United States in that it deprives the defendant of the right to be confronted with the witnesses against him in that no opportunity has been afforded to cross-examine the persons who are familiar with the accounts and transactions set forth in such Exhibit, or who made the original entries therein, so that the truth or accuracy of the statements in said Exhibit might be determined and, therefore, such document is pure hearsay as to defendant appellant, and upon the further reason that under Section 695, Title 28, U. S. C. A. no showing had been made that such Exhibit was made in the regular course of the business of the company, and no showing that it was the regular course of such business to make entries in such Exhibit at the time of the act, transaction, occurrence or event which such entries attempt to portray, or within a reasonable time after such act, transaction, occurrence or event took place, and the said Exhibit is not the best evidence and is hearsay. No materiality has been shown and it is irrelevant, incompetent and immaterial, being a book with a multitude of entries not shown to be in any material to the issues of the case. (T. of R. 168.)

IX

The Court erred in refusing to keep the government's witness King Wilson in the jurisdiction of the Court for cross-examination by the defendants when the books and records which he had identified should be by the government offered in evidence, for the reason that at the time the Court excused the witness King Wilson he had identified some seven Exhibits consisting of books of account and records. The said books had not been offered in evidence and no materiality of any figure in the books, or the relevancy thereof had been pointed out, and this defendant appellant was entitled to cross-examine the said government witness King Wilson as to any entries made by him in such books, and generally (176) as to such books and his knowledge of the transaction therein reflected and claimed by the government to be material, when the government should point out the claimed materiality thereof, or introduce the same in evidence, and in excusing said witness from attendance on the Court, to which ruling defendant appellant duly excepted. (T. of R. 169.)

XIII

The Court erred in admitting in evidence on behalf of plaintiff United States of America, over the objection and exception of defendant appellant, government's Exhibit No. 8, which is the journal of the Union Reserve Life Insurance Company from January 2, 1937, up to and including March 4, 1938, showing receipts and disbursements in detail of Union Reserve Life Insurance Company, for the reasons set forth as to the admissability of government's Exhibit No. 12,

assignment of error No. VIII above, and for the further reason that no proper foundation had been laid; that it was hearsay, irrelevant, incompetent and immaterial; that there was no showing of any materiality of anything connected in the book under the indictment or Bill of Particulars, and that the whole book was offered without specifying anything in it and it had no bearing on the case without a statement or showing as to its materiality or relevancy. (T. of R. 177.)

XIV

The Court erred in admitting in evidence on behalf of plaintiff United States of America, over the objection and exception of defendant appellant, government's Exhibit No. 28 being a bundle of receipts for the payment of premiums, covering a portion of the year 1937, showing the amount of premium, when due, when received and by whom paid, for the reasons the said Exhibit had not been properly identified, no materiality was shown, and on the face of the Exhibit and items in the Exhibit it does not tend to prove any charge in the indictment, is hearsay, irrelevant, incompetent and immaterial as to defendant appellant. (T. of R. 178.)

XV

The Court erred in admitting in evidence on behalf (180) of the plaintiff United States of America, over the objection and exception of the defendant appellant, government's Exhibit No. 11 which is the journal of Union Reserve Life Insurance Company from May 6, 1932, to December 31, 1934, containing the record of

cash receipts and disbursements of said Union Reserve Life Insurance Company during said period, for the same reasons set forth in the objections to government's Exhibit No. 12, assignment of error No. VIII above. (T. of R. 178.)

XVI

The Court erred in admitting in evidence on behalf of the plaintiff United States of America, over objection and exception of defendant appellant, government's Exhibit No. 10, the general cash journal beginning January 2, 1935, and ending December 31, 1935, showing the general cash receipts and disbursements of the Union Reserve Life Insurance Company for the year 1935, for the reasons assigned in the objections to Exhibit No. 12, assignment of error No. VIII above, and for the further reason that it appeared from the testimony of the witness King Wilson that this book had been kept by him and the Court had permitted the said witness to leave the jurisdiction of the Court and had thus deprived the defendant of his constitutional right under amendment six to the Constitution of the United States to be confronted with the witness against him, and the right to cross-examine that witness on documents introduced in evidence, and that it shifted the burden of proof from the government to the defendant. (T. of R. 179.)

XVII

The Court erred in denying the motion of defendant appellant Canning to strike from the evidence government's Exhibits Nos. 10, 11, 12 and 19, for the reason

that the constitutional rights of this defendant appellant to cross-examine witness King Wilson, who had testified he kept the books concerning entries made therein by him, had been denied by the Court in excusing the government witness King Wilson from further attendance upon said trial, (181) and for the further reason that no materiality of the entries in said books had been shown. (T. of R. 179.)

XVIII

The Court erred in admitting in evidence on behalf of the plaintiff United States of America, over the objection and exception of defendant appellant, government's Exhibit No. 9 for the same reasons set forth in the objection to Exhibit No. 12, assignment of error No. VIII, and for the further reason that the book purports on its fact to have been started in 1930, long before there was any record that the defendants, or any of them, were connected in any manner with the Union Reserve Life Insurance Company, or its predecessor, and no materiality was shown and the book contained irrelevant, incompetent and immaterial matters and there was no showing that the book was kept in the regular course of business, but on the contrary, it was shown that the entries were not made during the ordinary course of business but at a later date at the end of the year, and for the further reason that the witness King Wilson had been excused by the Court over the objection of defendant appellant from further attendance and thereby defendant appellant was deprived of his right of cross-examination. (T. of R. 180.)

XIX

The Court erred in admitting in evidence on behalf of the plaintiff United States of America, over the objection and exception of defendant appellant, government's Exhibit No. 7, which consists of annual reports of the Union Reserve Life Insurance Company to the Commissioner of Insurance of the State of Arizona for the years 1933, 1934, 1935 and 1936, containing the name of the company, where and on what date incorporated, the date of the commencement of business, the home office address, the names of the officers and directors, a statement of the capital stock and ledger assets, income from premiums, disbursements, ledger assets and liabilities and other funds, amount paid for business, business in the State of Arizona for the past year and a profit and loss state- (182) ment for the year together with a summary of the morgages owned by the company for each year for which said statement was filed, all four books being marked with one Exhibit number and all containing identical information for the year for which it was filed, for the reason that the said reports were incompetent, irrelevant and immaterial; no foundation had been laid for their introduction; they were hearsay as to defendant appellant and no materiality had been shown. (T. of R. 181.)

XX

The Court erred in admitting in evidence on behalf of the plaintiff United States of America, over the objection and exception of defendant appellant, government's Exhibit No. 29 which consists of six bound

volumes of duplicate check vouchers showing checks issued by the Union Reserve Life Insurance Company, the date issued, in whose favor drawn, to what bank directed, and the account for which said checks were drawn, being checks numbered 2583 to 3600, both inclusive, for the reason that no materiality was shown; as to defendant Earl Canning they are hearsay, immaterial, irrelevant and incompetent and for the further reasons set forth in assignment of error No. VIII as to government's Exhibit No. 12. (T. of R. 182.)

XXI

The Court erred in admitting in evidence on behalf of the plaintiff United States of America, over the objection and exception of defendant appellant, government's Exhibit No. 30, being six volumes of check stubs, a part of the records of the Union Reserve Life Insurance Company covering the period from August 8, 1934, to June 5, 1935, showing the record of all of the checks issued by the Union Reserve Life Insurance Company during that period of time, for the reason that no materiality was shown; as to defendant Canning they are hearsay, incompetent, irrelevant and immaterial. (T. of R. 182.)

XXII

The Court erred in admitting in evidence on be- (183) half of the plaintiff United States of America, over the objection and exception of defendant appellant, government's Exhibit No. 14, being the general ledger or agent's ledger of State Securities Corporation for the year 1933, showing receipts and disbursements

of said corporation for that period of time, together with agent's commissions and bond transfers, for the reason that no proper foundation had been laid; it is hearsay, immaterial and incompetent and there has been no showing as to the correctness of it, and no showing that the witness identifying it, Ora T. Hill, knew anything about the book, except the few entries she had made herself. (T. of R. 183.)

XXIII

The Court erred in admitting on behalf of plaintiff United States of America, over the objection and exception of defendant appellant, government's Exhibit No. 17, being the cash book and journal of the investment department of the State Securities Corporation for the years 1931 to 1933, showing cash receipts and disbursements of investment department of said corporation, the legal reserve set up, notes and bonds owned, general ledger assets, a record of bonds sold on installments, commissions paid and record of fully paid up bonds, for the reason that no proper foundation had been laid for its introduction, no materiality was pointed out; it had not been properly identified; it was immaterial, irrelevant and incompetent and hearsay and no showing that it was kept in the ordinary course of business, but on the contrary the witness Ora. T. Hill, through whom the government sought to identify the book for its introduction in evidence, testified that she could not identify the government's Exhibit No. 17; that she never worked on that book; that she was not in the office when any of the entries were made in that book, and not employed in the office at

the time the book was kept, and that she did not know that the entries were made in the ordinary course of business. (184) (T. of R. 183.)

XXIV

The Court erred in admitting in evidence on behalf of plaintiff United States of America, over the objection and exception of defendant appellant, government's Exhibit No. 15, being a purported cash book and journal of the insurance department of State Securities Corporation for the year 1933, beginning April 1, 1933, and ending December 31, 1933, showing receipts and disbursements during said period, for the reason that no materiality had been shown in said book, or in any of the entries thereof. The said book contains voluminous entries, the materiality of none of which is shown and as to defendant appellant Canning, the said book is hearsay, immaterial, irrelevant and incompetent. (T. of R. 184.)

XXV

The Court erred in admitting in evidence on behalf of plaintiff United States of America, over the objection and exception of defendant appellant, government's Exhibit No. 19 which consists of ten books of stock certificate stubs and used and unused certificates of stock of State Securities Corporation, being all of the stock certificate books owned and used by said State Securities Corporation and showing the number of shares, to whom and when issued and the cancellation of all shares cancelled and re-issued, together with

all other information relative to stock certificates, for the reason that no proper foundation was laid for their introduction, no materiality was shown and as to defendant Canning, they were hearsay, immaterial, irrelevant and incompetent. (T. of R. 184.)

XXVI

The Court erred in admitting in evidence on behalf of plaintiff United States of America, over the objection and exception of defendant appellant, government's Exhibit No. 22 consisting of forty receipt books, showing carbon copies of receipts issued by State Securities Corporation for money received during all of the period of the life of said corporation, for the same (185) reasons that the Court erred in admitting Exhibit No. 12, assignment of error No. VIII. (T. of R. 185.)

XXVII

The Court erred in admitting in evidence on behalf of plaintiff United States of America, over the objection and exception of defendant appellant, government's Exhibit No. 24, being twenty-three check books of check vouchers of Union Reserve Life Insurance Company showing the dates of checks, to whom drawn, the amount and for what purposes, for the same reasons the Court erred in admitting government's Exhibit No. 12, set forth in assignment of error No. VIII, and for the further reason that no materiality was shown and as to the defendant Earl Canning the said check books are hearsay, incompetent, immaterial and irrelevant. (T. of R. 186.)

XXVIII

The Court erred in denying the motion of defendant appellant to strike Exhibit No. 22 from the evidence for the reason that the said receipt books were not properly identified and were pure hearsay, and there was nothing before the Court to show that they were kept in the ordinary course of business, and there was no identification of any writing, the witness having testified that many of the books were not kept while she was in the employ of the State Securities Corporation, and she had nothing to do with them until 1937 and she had no knowledge of the making of those recpeit books at the time, nor any knowledge of the ordinary course of keeping books. (T. of R. 186.)

XXIX

The Court erred in admitting in evidence on behalf of plaintiff United States of America, over the objection and exception of defendant appellant, government's Exhibit No. 40, which is a carbon copy of a letter dated June 27, 1932, to Mr. J. Owen Ambler, Kensington Gardens, 1002 North Mariposa, Los Angeles, California, and which is set forth in full in the Bill of Exceptions, for the reason that it was not the best evidence. There was no showing as (186) to what became of the original letter, or whether or not it was lost. No foundation had been laid for its introduction: it was pure hearsay; it was not covered by the indictment or the Bill of Particulars, and there was no showing that defendant appellant had any knowledge of the writing of the letter, or that he had anything to do with it, and as to him it is pure hearsay, irrelevant, incompetent and immaterial. (T. of R. 186.)

XXX

The Court erred in admitting in evidence on behalf of plaintiff United States of America, over the objection and exception of defendant appellant, of that part of Exhibit No. 13 for identification consisting of the account under the name of L. Jo Hall, Lowell, Arizona, consisting of two pages beginning with the entry dated June 29, 1930, and the last entry being dated January 17, 1936, for the reason that no proper foundation had been laid for the introduction of the Exhibit; it is hearsay; it is not shown to have been kept in the ordinary course of business and is incompetent, immaterial and irrelevant for any purpose in the case. (T. of R. 187.)

XXXI

The Court erred in admitting in evidence on behalf of plaintiff United States of America, over the objection and exception of defendant appellant, government's Exhibit No. 18, being the purported cash book of Marquis, Cornes & Marquis, showing transactions, cash received, disbursements, agent's commissions, etc., for the reasons the Court erred in admitting government's Exhibit No. 12 set forth in assignment of error No. VIII above, and for the further reason that it is incompetent, irrelevant and immaterial, purporting to be a book kept from 1929 to 1932 inclusive, far beyond the period of limitation; no showing that it is complete and is not claimed as a book kept in the ordinary course of business in either of the corporations mentioned in the indictment. It was not properly identified and no foundation laid for its in-(187) troduction. (T. of R. 188.)

XXXII

The Court erred in admitting in evidence on behalf of the plaintiff United States of America, over the objection and exception of the defendant appellant, government's Exhibit No. 21 consisting of seventy-eight packages and thirteen envelopes, being two pasteboard boxes containing cancelled checks and bank statements of State Securities Corporation, for the same reasons the Court erred in admitting government's Exhibit No. 12 set forth in assignment of error No. VIII, and for the further reason that there was no evidence that the Exhibit contained all of like records of the company at that time. (T. of R. 188.)

XXXIII

The Court erred in admitting in evidence on behalf of plaintiff United States of America, over the objection and exception of the defendant appellant, government's Exhibit No. 23, being one pasteboard box of check stubs of State Securities Corporation, for the same reasons the Court erred in admitting government's Exhibit No. 12, set forth in assignment of error No. VIII. (188) (T. of R. 189.)

XXXIX

The Court erred in admitting in evidence on behalf of the plaintiff, United States of America, over the objection and exception of defendant appellant, Government's Exhibit No. 27-D, being purported minutes of a meeting of the Board of Directors of the Union

Reserve Life Insurance Company, held May 15, 1933, which are unsigned, for the reason that no proper foundation had been laid for its introduction, that it is remote, unsigned and (190) as to defendant appellant Canning irrevelant, incompetent and immaterial; not binding and pure hearsay, and for the further reason that the said purported minutes had not been properly, or at all, identified as being the minutes of any meeting regularly held. There was no showing that any of the defendants were present or that such a meeting had ever been held. (T. of R. 191.)

XL

The Court erred in admitting in evidence on behalf of the plaintiff, United States of America, over the objection and exception of defendant appellant, Government's Exhibit No. 27-E, purporting to be unsigned minutes of a meeting of the Board of Directors of Union Reserve Life Insurance Company, held March 29, 1937, for the reason that the said minutes had not been properly identified, they are unsigned, there was no showing that any such meeting had ever been held, and no showing that defendant appellant Canning ever attended any such meeting, and it was affirmatively shown that the defendant Canning was not an officer, stockholder or director of such company, and as to him the said minutes are irrevelant, incompetent, immaterial and pure hearsay, and there was no showing that George H. Cornes, or any of the other persons named therein, had ever attended such a meeting or that such a meeting had in fact ever been held. (T. of R. 192.)

XLI

The Court erred in admitting in evidence on behalf of the plaintiff, United States of America, over the objection and exception of defendant appellant, Government's Exhibit No. 26-A, purporting to be unsigned minutes of a meeting of the stockholders of State Securities Corporation held February 9, 1937, for the reason that the said minutes were not properly identified, they were not signed, there was no proof that any of the persons named therein ever attended such a meeting or that such a meeting (191) had ever been held. There was no showing that defendant appellant Canning ever knew anything about any such purported meeting, and it was affirmatively shown that he was not a stockholder, officer or director of said company, and as to him the said minutes were pure hearsay, immaterial, irrevelant and incompetent. (T. of R. 193.)

XLII

The Court erred in admitting in evidence on behalf of the plaintiff, United States of America, over the objection and exception of the defendant appellant, Government's Exhibit No. 26-B, which purports to be unsigned minutes of a meeting of the stockholders of State Securities Corporation, held February 8, 1938, for the reason that there was no showing that defendant Canning attended such meeting, there was no showing that such a meeting was ever held, the minutes had not been properly identified and no foundation was laid for their introduction. The minutes purport to be of a meeting held in February, 1938, long after the transaction set forth in the indictment. There was

no showing that George H. Cornes, or any of the other persons named in said minutes, ever attended such meeting, or that such meeting had ever been held. (T. of R. 193.)

XLIII

The Court erred in admitting in evidence on behalf of the plaintiff, United States of America, over the objection and exception of defendant appellant, Government's Exhibit No. 26-C, being purported minutes of a meeting of the Executive Committee of State Securities Corporation, held September 5, 1936, unsigned, and no showing was made that a meeting of the Executive Committee was held on said date, nor as to who was present thereat, and no attempt to show that the defendant appellant Canning attended such meeting or knew anything concerning the same, and is was affirmatively shown that he was not a member of said Executive (192) Committee, there was no showing as to what had become of the original letter setting forth such minutes, if there had been one, and no proper foundation laid for its introduction nor properly identified and as to defendant appellant Earl Canning pure hearsay. (T. of R. 194.)

L

The Court erred in admitting in evidence on behalf of the plaintiff, United States of America, over the objection and exception of defendant appellant, Government's Exhibit No. 52, and Government's Exhibit No. 53, consisting of a portion of the records of the First National Bank of Arizona at Phoenix, as set

forth in the bill of exceptions, for the same reasons that the Court erred in admitting Government's Exhibit No. 12, set forth in Assignment of Error VIII, and for the further reason that no proper foundation had been laid, no proper identification of the exhibit was made, that as to defendant appellant they are pure hearsay, incompetent, irrevelant and immaterial. (T. of R. 197.)

LI

The Court erred in admitting in evidence on behalf of the plaintiff, United States of America, over the objection and exception of defendant appellant, Government's Exhibit No. 48-A and Government's Exhibit No. 49-A, being purported carbon copies of letters addressed to Insurance Index, concerning the financial report and publication of information relative to Union Reserve Life Insurance Company, for the same reasons the Court erred in admitting Government's Exhibit No. 40, set forth in Assignment of Error XXIX. T. of R. 198.)

LII

The Court erred in admitting in evidence on behalf of (195) the plaintiff, United States of America, over the objection and exception of defendant appellant, Government's Exhibit No. 54, consisting of two documents, being a ltter written to H. F. Ling under date of November 7, 1934, together with the second sheet enclosed therewith, addressed to H. F. Ling, dated November 5, 1934, and setting forth the allocation of 100 shares of capital stock of State Securities Corporation to the said H. F. Ling, for the reason that no

foundation was laid for their introduction, and it is too remote, that it is not within the issues as made in the indictment or supplemented by the bill of particulars, and as to defendant appellant Earl Canning it is pure hearsay, immaterial, irrevelant and incompetent. (T. of R. 198.)

LIV

The Court erred in admitting in evidence on behalf of the plaintiff, United States of America, over the objection and exception of defendant appellant, Government's Exhibit No. 34, consisting of a letter dated July 20, 1937, addressed to Mr. Gerald Palmer, Cross Triangle Ranch, with its accompanying envelope and proxy receipt, for the reasons that the Court erred in admitting Government's Exhibit No. 40, set forth in Assignment of Error XXIX, and for the further reason that the said exhibit is hearsay as to defendant Canning, irrevelant, incompetent and immaterial. (T. of R. 200.)

LVI

The Court erred in admitting in evidence on behalf of the plaintiff, United States of America, over the objection and exception of defendant appellant, Government's Exhibit No. 33, consisting of a stamped envelope, addressed to May E. Bonar, with a printed annual report of Union Reserve Life Insurance Company as of December 31, 1936, for the reason that as to defendant appellant Canning no proper foundation had been laid for its introduction, it had not been properly identified, it was irrevelant, incompetent, immaterial and hearsay. (197) T. of R. 200.)

LVII

The Court erred in admitting in evidence on behalf of the plaintiff, United States of America, over the objection and exception of defendant appellant, Government's Exhibit No. 41, being a letter dated August 9, 1933, addressed to Mrs. May E. Bonar, with accompanying envelope, for the same reasons that the Court erred in admitting Government's Exhibit No. 40, set forth in Assignment of Error XXIX above, and for the further reason that the letter was too remote, the stock was purchased three years before the date of the letter, and there is no charge or allegation concerning the mailing of the letter in the furtherance of any scheme to defraud, that it is immaterial, incompetent and irrevelant, and had not been properly identified and no proper foundation had been laid. (T. of R. 201.)

LIX

The Court erred in admitting in evidence on behalf of the plaintiff, United States of America, over the objection and exception of defendant appellant, Government's Exhibit No. 57 and (198) Government's Exhibit 58, being respectively, a certificate for 600 shares of the capital stock of State Securities Corporation, issued to L. Jo. Hal, June 29, 1930, and check dated August 18, 1930, drawn to the order of State Securities Corporation, signed by L. Jo Hall, in the sum of $6,000, for the reason that as to defendant Canning the said exhibits, and each of them, are irrevelant, incompetent and immaterial, hearsay, no proper foundation laid, and not set forth in the indictment or in the bill of particulars. (T. of R. 202.)

LXIII

The Court erred in admitting in evidence on behalf of the plaintiff, United States of America, over the objection and exception of defendant appellant, Government's Exhibits Nos. 26-D, 26-E, 26-F, 26-G, 26-H, 26-I, 26-J, 26-K, 26-L, 26-M, 26-N, 26-O, 26-P, 26-Q, 26-R, 26-S, 26-T, 26-U, 26-V, 26-W, 26-X, 26-Y, and 26-Z, consisting of purported minutes of meetings, which are set forth in the Bill of Exception, for the reason that as to (200) defendant Canning, no proper foundation had been laid for their introduction, no proof was offered that the purported minutes correctly relate what occurred at any of the purported meetings, and that as to defendant Canning, he not being an officer, director or stockholder of any of the companies, the said minutes are irrevelant, incompetent, immaterial and pure hearsay. (T. of R. 205.)

LXV

The Court erred in denying the motion of defendant appellant made at close of the government's case, to strike from the evidence all of the parts of the government's Exhibits No. 26 and No. 27 for identification, which had been marked and put in evidence, they being the purported minutes of State Securities Corporation and Union Reserve Life Insurance Company, respectively, for the reason that as to defendant Canning they are hearsay and no foundation was laid for their introduction; they were not properly identified; there was no showing that the minutes were kept in the regular course of business of the two companies, but on the contrary the evidence shows that they were written

up at the end of the year. There was no showing that they had ever been communicated to defendant appellant Canning or that he had any knowledge thereof. (T. of R. 207.)

LXVI

The Court erred in denying the motion of defendant appellant Canning made at the close of the Government's case, to strike severally and separately from the evidence government's Exhibits numbered 4, 5, 6, 28, 39, 40, 41, 42, 43, 44, 45, 46, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, and 63 for the reason that they, and each of them, separately and severally were irrevelant, incompetent and immaterial, too remote, not the best evidence, no (203) foundation had been laid for their introduction and as to defendant appellant they, and each of them, are hearsay. (T. of R. 207.)

LXVII

The Court erred in denying the motion of defendant appellant, made at the close of Government's case, to strike from the exidence government's Exhibits numbered 8, 9, 10, 11, 12, 14, 15, 16, 17, and 18, severally and separately, they being the books and records of the companies, for the reasons that no proper foundation had been laid for their introduction; there was no showing that this defendant had any charge of the bookkeeping system, as to him they are hearsay, incompetent, irrevelant and immaterial. (T. of R. 208.)

LXVIII

The Court erred in denying the motion of defendant appellant, made at the close of the government's case, to strike from the evidence all of the testimony of the

witness Hair, for the reason that the witness testified that some of the figures which he presented to the Court he got from other sources than the books and records in evidence and upon which figures and testimony, so obtained, he could not be cross-examined, and such testimony constitutes hearsay because not based upon facts, or books or records in evidence, and as to defendant appellant his testimony is hearcay, incompetent, irrevelant and immaterial. (204) (T. of R. 208).

LXIX

The Court erred in permitting the witness E. P. Hair to testify in rebuttal, over the objection and exception of the defendant appellant, concerning entries in the book of Marquis, Cornes and Marquis, and in the cash book of Union Reserve Life Insurance Comhad with J. Elmer Johnson, for the reason that said testimony was not proper rebuttal, no question having been asked in the Government's case concerning any business transactions with the said J. Elmer Johnson, such transactions not having been referred to in the indictment or in the bill of particulars, such testimony was not offered for impeachment purposes of any witness, no foundation had been laid for its introduction and it was highly prejudicial. (T. of R. 209.)

LXX

The Court erred in admitting in evidence on behalf of the plaintiff, United States of America, over the objection and exception of defendant appellant, Government's Exhibit No. 67, which purports to be a balance sheet of State Securities Corporation as of Jan-

uary 31, 1931, prepared by Government's witness Hair for the reason that said exhibit was not proper rebuttal evidence, does not purport to be accurate and correct, and is irrevelant, incompetent and immaterial and pure hearsay. (T. of R. 209.)

LXXI

The Court erred in admitting in evidence, on behalf of the plaintiff, United States of America, over the objection and exception of defendant appellant, Government's Exhibit No. 68, which is in full substance as follows:

GOVERNMENT'S EXHIBIT NO. 68

March 26, 1937.

Mr. G. L. Reay
R. F. D.
Winkelman, Arizona (205)

Dear Mr. Reay:

I am in receipt of letter from J. Elmer Johnson stating that he had requested you to call at this office in regard to mortgage held by this company on ninety (90) acres of land owned by Mr. Johnson and yourself.

We have been expecting you, but up to this date we have not had the pleasure of your visit. It is necessary that some adjustment of this past-due matter be made; hence I am asking that upon receipt of this letter that you give personal attention to the item.

I am enclosing stamped, addressed envelope for your convenience in advising when you can meet me at our office.

Very truly yours,

R. F. MARQUIS
Secretary-Treasurer

RFM:MD

for the reason that no proper foundation had been laid for its introduction as against the defendant appellant Canning, as to him it is pure hearsay, irrevelant, incompetent and immaterial. (T. of R. 210.)

LXXIII

The Court erred in denying the motion of defendant appellant, made at the close of all of the evidence, to strike all testimony given in the case of events claimed to have transpired subsequent to January 1, 1938, for the reason that, under Court Six, the conspiracy count in the indictment, the alleged conspiracy was alleged to have ended on January 1, 1938, and any events subsequent to such date would be wholly irrevelant, incompetent and immaterial and pure hearsay, and without the bounds of the indictment or the bill of particulars as it affects Count Six, the conspiracy charge. (T. of R. 213.)

SUPPLEMENTAL ASSIGNMENTS OF ERROR OF DEFENDANT GEORGE H. CORNES

3. The Court erred in denying defendant George H. Cornes' motion made at the close of all the evidence that the (221) Court direct the jury to return a ver-

dict for defendant finding him not guilty on each of counts 3, 4, and 6 of the indictment for the reason there was no substantial evidence to sustain the charge contained in either of said counts in that:

(a) There was no substantial evidence to show that defendant devised or intended to devise a scheme or artifice to defraud or to obtain money or property by means of false or fraudulent pretences, representations, or promises as charged therein, nor that he aided or abeted in any such scheme or artifice, or conspired with any of the other defendants, or with any other person, to obtain money or property by means of false or fraudulent pretences, representations, or promises, or to use the mails in furtherance thereof.

(b) There was no substantial evidence to show that defendant ever made or aided or assisted in making any false or fraudulent representations or promises in the sale of stocks or bonds.

(c) There was no substantial evidence of any intent on the part of defendant to defraud or to obtain money or property by means of false or fraudulent pretences, representations, or promises.

(d) The evidence as a whole shows that the representations, promises, and inducements made by defendant in the sale of stocks or bonds were honest, truthful, and consistent with the facts existing at the time of such sale.

(e) The Government's evidence clearly shows that no conspiracy or unity of action whatsoever existed between defendant and any of the other defendants,

or other persons, to defraud by means of any false or fraudulent pretence, representation, or promise; on the other hand the Government's evidence shows that knowledge of the activities of the States Securities Corporation and the Union Reserve Life Insurance Company was withheld from defendant, that he occupied a nominal office only in either (222) company, that his work was entirely that of salesman in the field, and that he did not profit as alleged by the Government in the indictment. (T. of R. 238.)